Before the Negotiable Instruments Law, as regards a payee who knew the nature of the undertaking, an accommodation maker was a surety and had the benefit of all surety defenses. *Amer. & Genl. Mtge., etc. Corp.* v. *Marquam* (C. C. 1894) 62 Fed. 960. Some courts now hold that the Negotiable Instruments Law has changed the rule so that under such circumstances an accommodation maker is no longer a surety. *Union Trust Co.* v. *McGinty* (1912) 212 Mass. 205, 98 N. E. 679; *contra, Long* v. *Shafer* (1914) 185 Mo. App. 641, 171 S. W. 690; *Fullerton Lumber Co.* v. *Snouffer* (1908) 139 Iowa 176, 117 N. W. 50. In the instant case, the court held that the accommodation party was a surety and accordingly a release of collateral discharged him *pro tanto*. *Gotzian & Co.* v. *Heine* (1902) 87 Minn. 429, 92 N. W. 398; see *Pledge* v. *Buss* (1860) 6 Jur. (N. S.) 695, 696; Colebrooke, *Collateral Securities* (2nd ed. 1898) 239. This is because a release of collateral diminishes the value of the surety's right of subrogation *pro tanto*. See *Bronson* v. *McCormick Harvesting Machine Co.* (1897) 52 Neb. 342, 72 N. W. 312. In the instant case, if the note from R were lost, anyone suing thereon would first have to establish its loss. *Burgwin* v. *Richardson* (1824) 10 N. C. 203. This action could only be brought in equity on filing an indemnity bond approved by the court. *Hansard* v. *Robinson* (1827) 7 B. & C. 90. Massachusetts allows such an action at law. *Fales* v. *Russell* (1835) 33 Mass. 315. Today, statutes generally govern the action. N. Dak., Comp. Laws (1913) § 7962; N. Y. Code Civ. Proc. § 1917. The appellant therefore has not been deprived of his security if R's note is lost, but since in suing R he would have to put up a bond, the plaintiff should be required to file a bond in suing the surety so as not to prejudice the latter.

CARRIERS—LOSS OF GOODS—PROOF OF SHIPMENT.—A box of goods was shipped with the defendant carrier, who issued a bill of lading acknowledging the receipt of "one case of apparel in apparent good order, weight, contents, and quality unknown". Upon arrival at its destination the box was found to have been broken into and patched up. The plaintiff in suing for the value of the goods alleged to have been stolen did not offer any evidence that the apparel removed was in the case when it was delivered to the defendant for shipment. *Held,* the bill of lading merely admitted that the case was externally in good order and not that it contained apparel. In the absence of *prima facie* evidence that the box contained the goods when handed to the carrier, the plaintiff should be nonsuited. *New Zealand Shipping Co. Ltd.* v. *Lewis' Ltd.* [1920] N. Z. L. R. 243.

In an action against a carrier for the loss of goods, proof that the carrier received them for transportation and failed to deliver them makes out a *prima facie* case. *Southern Ry.* v. *Levy* (1905) 144 Ala. 614, 39 So. 95. The burden of proof is on the plaintiff to show there was a delivery to the carrier, in other words, that the carrier had custody when the goods were stolen. *Wallens* v. *New York C. & H. R. R.* (1917) 166 N. Y. Supp. 1083; *New Chinese Antimony Co.* v. *Ocean Steamship Co.* [1917] 2 K. B. 664. As regards the effect given to the recital of receipt in the bill of lading, there are two types of cases which the American courts seem to differentiate. Where the carrier can easily examine the goods and verify the statement of quantity in the bill of lading, the recital is generally regarded as *prima facie* evidence of the shipment of the amount stated, sufficient to go to the jury, despite the presence of the words "shipper's count" or of a similar qualifying phrase. *Morris* v. *Minneapolis, etc. Ry.* (1913) 25 N. D. 136, 141 N. W. 204. But it is not conclusive and may be contradicted by the carrier. *Reid Phos-*

phate Co. v. *Farmers' Fertilizer Co.* (1913) 94 S. C. 212, 77 S. E. 863. However, the present English view seems to be that the qualifying phrase prevents the recital from being even *prima facie* evidence of the quantity. *New Chinese Antimony Co.* v. *Ocean Steamship Co., supra.* On the other hand, where, as in the instant case, the goods are in closed containers, it would be practically impossible for the carrier to open each box to ascertain the amount within. In such case, the bill of lading with the words "contents unknown" or a like qualification admits only the visible exterior and is not even *prima facie* evidence that the package contains the described quantity. *Isdaner* v. *Philadelphia & Reading Ry.* (1913) 54 Pa. Super. Ct. 509; *Miller* v. *Hannibal & St. Joseph R. R.* (1882) 90 N. Y. 430.

CONFLICT OF LAWS—RULE OF THE PLACE OF PERFORMANCE—SUBSEQUENT ILLEGALITY.—The defendants, an English Company, entered into a charter party in England with the plaintiffs, a Spanish Company, through the agents of the latter, providing for the carriage by the plaintiffs' ship of jute from Calcutta to Spain. The freight charge was £50 per ton, one half payable in London upon the departure of the vessel from Calcutta, the other half payable by the receivers of the cargo at the port of discharge in Spain. The charter party provided for the arbitration of disputes in London. After the making of the agreement, Spain decreed that the maximum amount of freight payable on jute imported into Spain should be 875 *pesetas* per ton, a sum less than £50 per ton. The plaintiffs' steamer sailed from Calcutta and the defendants paid one half of the freight to the plaintiffs' agents in London. The receivers in Spain refused to pay more than 875 *pesetas* per ton and the plaintiffs sue for the balance. *Held,* for the defendants. *Ralli Brothers* v. *Compania Naviera Sota y Aznar* (1920) 25 Times Commercial Cases 227.

In a purely domestic transaction it is well settled that subsequent illegality excuses both parties from performance. *Metropolitan Water Board* v. *Dick, Kerr & Co.* [1918] 1 A. C. 119; *Public Service Electric Co.* v. *Board of Public Utility Com'rs* (1915) 87 N. J. L. 128, 93 Atl. 707. In the early English cases, when a contract was to be performed in whole or in part in a jurisdiction where performance became illegal according to the foreign law, the parties were not excused from performance. *Sjoerds* v. *Luscombe* (1812) 16 East 201; *Barker* v. *Hodgson* (1814) 3 M. & S. 2677. American courts still adhere to this doctrine. *Tweedie Trading Co.* v. *James P. McDonald Co.* (D. C. 1902) 114 Fed. 985; *Richards & Co.* v. *Wreschner* (1916) 174 App. Div. 484, 156 N. Y. Supp. 1054. The more recent English cases have released parties from their obligations where the contract was illegal according to the *lex loci solutionis. Cunningham* v. *Dunn* (1878) L. R. 3 C. P. D. 443; *cf. Ford* v. *Cotesworth* (1870) L. R. 5 Q. B. 544. Assuming that the court's interpretation of the charter party involved in the instant case is accurate, these later authorities are controlling. However, non-performance of contracts cannot be excused in every case merely on the ground of illegality created by foreign law, for in many cases such illegality may have been created solely as a form of political retaliation. See 2 Parsons, *Contracts* (9th ed. 1904) *754. In the absence of such special circumstances, sound policy dictates the recognition of the positive laws of a foreign country, and where performance is rendered illegal the contracting parties should be excused. Much of the confusion of the courts arises from confounding "impossibility in point of fact" with so-called "impossibility in point of law".

CRIMINAL LAW—TRIAL BY JURY—DIRECTED VERDICT.—In a criminal action punishable by imprisonment, where all the facts were undisputed, a federal judge